

18 February 2015

RE: NATURAL RESOURCE GOVERNANCE INSTITUTE SUBMISSION ON THE DRAFT RESOURCE REVENUE MANAGEMENT PILLAR (PILLAR IV) OF THE IMF'S FISCAL TRANSPARENCY CODE

Summary:

- I. Pillar IV should reflect recent developments emphasizing public accessibility of data in machine-readable, open format.** International initiatives such as the G8 Open Data Charter of 2013 and the EITI Standard reflect the growing recognition of the importance of accessibility of data in a machine-readable, open format, particularly in the extractive sector. Pillar IV should reflect these developments and the IMF should take the opportunity to itself contribute to these developments by making its Fiscal Transparency Evaluations regular, mandatory and public for resource-rich countries and publishing all Fiscal Transparency Evaluations in machine-readable, open data format.
- II. Pillar IV should reflect the current state of project-level disclosure by designating it “basic” or “good” practice.** Mandatory payment disclosure laws, EITI reporting and voluntary disclosure by investors all reflect the growing influence of project-level disclosure to the extent that such disclosure can no longer be deemed “advanced.”
- III. Pillar IV should maintain a separate section for national resource companies.** The key role that management of national resource companies plays in countries’ ability to translate potential wealth into sustainable development merits separate treatment. Further, disclosures related to public corporations under Pillar III of the Fiscal Transparency Code exclude several disclosures required under the EITI Standard and recommended by existing literature. Pillar IV should reflect these additional elements.

About the Natural Resource Governance Institute:

The Natural Resource Governance Institute (NRGI) is an international non-profit policy institute and grant-making organization whose focus and expertise is the responsible management of oil, gas and mineral resources for the public good. Our work promotes transparency and governance standards for the management of

natural resources and resource revenues by governments, as well as the associated activities of companies, lenders and investors active in the extractive industries. We work in resource-rich countries in Africa, the Middle East, Eurasia, Latin America, South East Asia and the Pacific.

We also work at the international level to inform and implement best practice standards for extractive industry governance, and have played a central role in the establishment of the Natural Resource Charter (NRC)¹, the Extractive Industries Transparency Initiative (EITI) and the Publish What You Pay (PWYP) coalition. NRGi additionally publishes the Resource Governance Index (RGI), which measures the quality of governance of oil, gas and mining sectors across 58 countries producing 85 percent of the world's petroleum, 90 percent of diamonds and 80 percent of copper, generating trillions of dollars in annual profits. A new edition of the RGI is forthcoming. Please find more information on NRGi at: www.resourcegovernance.org.

I. Introduction:

We are grateful once again for the opportunity to comment on the draft Resource Revenue Management Pillar (“Pillar IV”) of the IMF’s Fiscal Transparency Code.

We note that the previous Guide on Resource Revenue Transparency (the “Guide”) was a pioneer document pushing the boundaries of transparency in the management of oil, gas and mining and inspiring efforts to increase transparency in resource rich countries by a wide range of other actors, including NRGi. The Guide has bolstered our efforts to improve the requirements of EITI, international accounting standards, lending standards at international financial institutions, and national laws and regulations and has served as a principal source in the design of the surveys underlying the RGI.

We are pleased to note that Pillar IV continues to advance the cause of transparency—so vital for good governance of the natural resource sector—incorporating some of the latest developments in the field. Pillar IV reflects the spread of mandatory payment disclosure—particularly disclosure at a project-by-project level—beginning with the U.S. Dodd-Frank Act Section 1504 and followed by the Amendments to the EU Accounting and Transparency Directives of 2013, regulations adopted in late 2013 in Norway pursuant to the Accounting Act and Securities Trading Act, the U.K.’s Reports on Payments to Governments Regulations

¹ The Natural Resource Charter is a set of principles to guide governments’ and societies’ use of natural resources. See more here: www.naturalresourcecharter.org

2014 implementing the EU Accounting Directive and Canada's Extractive Sector Transparency Measures Act of 2014. Similarly, Pillar IV captures advances in contract transparency and disclosure of beneficial ownership. We note the IMF has taken steps to address environmental and social impacts and cover competitive bidding in Pillar IV, and has explicitly included commodity trading in resource revenue reporting. We also think it a positive step that the IMF has sought to recognize differing levels of country capacity and has therefore differentiated between basic, good and advanced practice, providing a roadmap for improvements as country capacity develops. This is in line with our own attempts in the RGI to evaluate country practices.

We would like to flag, however, that the basic, good and advanced practice distinctions do run the risk of making artificial distinctions between the levels of practice and sometimes result in practices (such as project-by-project disclosure) being labelled "advanced" when they have arguably become sufficiently widespread to be labelled "good" or even "basic". We have noted some of those instances below. On those specific points, Pillar IV runs the risk of being regressive rather than reflecting and advancing the current state of transparency. Care will need to be taken going forward to ensure that Pillar IV does not fall behind the curve as good practice rapidly evolves. The IMF should also guard against these practice distinctions being used as an excuse for limiting transparency where the issue is political will rather than capacity constraints (for example, publication of regulations need not be reserved for countries with high institutional capacity and it has been demonstrated that contract transparency is well within the reach of countries with lower capacity²).

Further, while we laud the IMF for continuing to advance fiscal transparency, it is important to highlight that resource revenue transparency is a necessary but not sufficient condition for effective use of these revenues, so often lost through corruption or waste. Emphasis must be placed on accountability and governance reforms aimed at ensuring good public financial management.

There are a number of other points for which we recommend clarification or expansion, as set forth below. In section II we put forward recommendations for each of the four parts of Pillar IV, addressing issues in the order in which they appear. We provide a summary table listing all our recommendations in the attached Annex.

² For example, Guinea.

II. Key Recommendations:

General

On Regular, Mandatory, Public Fiscal Transparency Evaluations

We welcome the fact that Pillar IV will form part of the Fiscal Transparency Evaluations (FTEs) for resource-rich countries and will be used in conjunction with Pillars I through III to provide a complete picture of resource revenue transparency. **We believe the impact and effectiveness of the Fiscal Transparency Code in advancing resource revenue transparency would be greatly enhanced if FTEs for resource-rich countries were produced on a regular and mandatory basis and were published.**

On Open Data

Further, we encourage the IMF to take the lead in the growing movement to ensure that government information and data are not just available but also accessible and useable through dissemination in machine-readable, open data format (see our comments below under **4.2 Fiscal Reporting**). The IMF has a great opportunity to lead by example, by **publishing the valuable information contained in Fiscal Transparency Evaluations conducted under the new Fiscal Transparency Code in machine-readable, open data format.**³

On Consistent Use of Terms

Concerning the use of “published” versus “publicly disclosed” or “disclosed”, we suggest being consistent with terms to avoid any confusion. “Published” is used most throughout the document, so we recommend consistently using “published.” Further, as set forth below, we recommend including a definition of “published” that makes explicit reference to public accessibility of information. Information may be technically “available” but governments must ensure that the information is disseminated in location(s) and format(s) that allow the public to easily access and make use of the information.

³ More broadly, we highly encourage the IMF to show transparency leadership by publishing the FARI model, benchmarks and modelling assumptions and the Fiscal Affairs Department Technical Assistance reports (unless objections are raised by the relevant government/company).

4.1 Legal and Fiscal Regime

4.1.1 Legal Framework for Resource Rights

We **believe that publication of regulations should be considered a basic practice.** Regulations provide necessary detail for the interpretation and implementation of laws and should be published along with the laws to which they relate; a practice that is already commonplace. Further, **we disagree with the designation of publication of model licenses or contracts under 4.1.1 as “advanced” practice.** To begin with, model agreements or licenses may themselves be issued as regulations, in which case they should be published as basic practice along with the other regulations.⁴ Moreover, the characterization of the publication of model contracts or licenses as “advanced” practice is inconsistent with the rest of Pillar IV: 4.1.3 calls defining the fiscal regime in such models “good” practice and 4.2.1 labels publication of “full text of terms and conditions associated with ... natural resource rights” as “good” practice. We suggest that if publication of the full terms themselves is “good” practice, publication of a template or model should similarly be considered “basic” or “good” and not “advanced” practice.

4.1.2 Allocation of Resource Rights

We believe there is a lack of clarity in the various gradations for 4.1.2 Allocation of Resource Rights. It appears that the lack of reference to a competitive process under “basic” is meant to indicate that use of a competitive process would be a “good” to “advanced” practice. This would seem to acknowledge that the geological information and administrative capacity necessary to successfully carry out a competitive bidding process may not be present in the most low-capacity countries. However, the point that a competitive process *should* be used as “good” and “advanced” practice where there is potential to improve outcomes is not clearly captured. As written, the gradation only captures *how* competitive tenders should be carried out (for example, with “predefined qualification and evaluation criteria”) and not *if or when* competitive tenders should be conducted. **We suggest adding the following sentence to the “good” and “advanced” practice: “Competitive tenders are used where there is potential to improve outcomes due to factors such as sufficient geological knowledge or interest.”**

Further, even in cases of direct negotiations or a “first come, first served” process, countries should define qualification and evaluation criteria, which would enhance the transparency of the process and ensure that licenses are only awarded to those

⁴ See, for example, Uganda’s published Mining Regulations 2004, which provide forms of various license applications, licenses, reports and certificates.

that meet a basic level of competence. In addition, **the meaning of “open process” could be spelled out more clearly**, by including reference to published rules and qualification and evaluation criteria, an ability for all qualified companies to participate and mechanisms for ensuring sufficient publicity such as published invitations to apply or published announcement of direct negotiations. **Clarification of the language “granting of rights is publicly disclosed”** would also be beneficial. We were not sure whether this meant advanced announcement of the award process or publication of the identity of the awardee each time that a license is awarded, both of which we agree should be basic practice.

A number of elements might be included in both “good” and “advanced” practice that would make for a more transparent process. **While both “good” and “advanced” practice require “predefined qualification and evaluation criteria”, in neither case is there a requirement for these criteria to be published/publicly disclosed.** The fact that they exist and that the results of tenders are “publicly disclosed” may not provide a sufficient check to ensure that results of tenders are in keeping with the predefined criteria. **It is also unclear how the “results of tenders” differed from the “granting of rights is publicly disclosed.”** If both mean that the winner of the bid or the entity that is ultimately awarded the license is disclosed, then the terms would be redundant. In this case the language under “good” and “advanced” should be revised to indicate that the winner would be publicly disclosed. That said, **we would recommend including additional information to be publicly disclosed such as the list of bidders and a bid evaluation report that provides information on all submitted bids.**

In general, **allocations of all licenses and contracts throughout the sector should be based on an open and preferably competitive process.** For example, licenses to lift crude oil, as well as service contracts, should all be subject to an open competitive process, not simply upstream license allocations.

Concerning the use of “published” versus “publicly disclosed” in 4.1.2, we suggest being consistent with terms to avoid any confusion. “Published” is used most throughout the document, so we recommend consistently using “published.”

4.1.3 Fiscal Regime for Natural Resources

Reference under “advanced” practice to **“specifying the scope for variation of contractual terms” is currently unclear.** We believe this is meant to both limit the scope for variation of fiscal terms and require disclosure of how and when terms may deviate from the legal framework. **We suggest rewording as follows: “The legal framework defines the fiscal regime for each natural resource sector and includes model contracts for production sharing or other contractual systems,**

limits the scope for deviation from the defined fiscal regime and requires disclosure of any deviations within the scope.”

4.2 Fiscal Reporting

We applaud the IMF for advancing the cause of contract transparency, a growing trend⁵, as well as developments on disclosure of beneficial ownership, currently encouraged by the EITI⁶ and soon to be implemented in the U.K.⁷ and across EU countries under the fourth anti-money laundering directive.⁸ We are also pleased that advances on mandatory disclosure of payments made to governments have been reflected.

For the heading of 4.2, **we recommend highlighting that the reports to be provided by governments and resource countries will be “published” rather than “provided”** to be consistent with the subparts. **Further, we believe the language throughout 4.2 should also specifically cover activities that take place *before* extraction.** This would be consistent with section 4.1.2 Allocation of Resource Rights, consistent with the most recent mandatory payment disclosure laws⁹ and would ensure that payments for activities taking place before actual extraction (including signatures bonuses, which may be quite substantial) are included. **We recommend replacing “extraction and trading” with “exploration, extraction and trading”** to be consistent with 4.1.2.

The heading would therefore read:

⁵ For example, countries like the United States, Timor-Leste, Peru, Colombia, the Kurdistan Regional Government (Iraq), Niger, Sierra Leone, Sao Tome & Principe, Guinea, Nigeria, Ghana, the Democratic Republic of Congo and Liberia all share contracts publicly.

⁶ Eleven countries—Burkina Faso, Cameroon, the Democratic Republic of Congo, Honduras, Kyrgyz Republic, Liberia, Niger, Tajikistan, Tanzania, Togo and Zambia—are engaged in a pilot to assess the feasibility of requiring beneficial ownership disclosure through EITI, with a view to making such disclosure mandatory under EITI from 2016, subject to successful piloting. Beneficial ownership disclosure has already been attempted by the Democratic Republic of Congo in its EITI report published in December 2014, available at: <http://www.itierdc.com/formulaire/Rapport%20de%20Conciliation%20ITIE%20RDC%202012%20-%20Final%20.pdf>

⁷ At the 2013 G8 Conference, the U.K. government committed to implementing a public central registry of company beneficial ownership information.

<https://www.gov.uk/government/news/public-register-to-boost-company-transparency>

⁸ <http://www.europarl.europa.eu/news/en/news-room/content/20150126IPR14918/html/Money-laundering-company-owner-lists-to-fight-tax-crime-and-terrorist-financing>

⁹ For example, the EU Accounting Directives cover “exploration, prospection, discovery, development, and extraction” (Article 41(1)) and Canada’s Extractive Sector Transparency Measures Act covers at least “exploration and extraction” with the possibility of inclusion of “other prescribed activities” (section 2).

“Governments and resource companies should *publish* comprehensive, timely, and reliable reports on holdings of natural resource rights, on *exploration*, extraction and trading activities, and on collections and payments of resource revenue.”

4.2.1 Disclosure of Natural Resource Rights

In 4.2.1 Disclosure of Natural Resource Rights, we recommend revising to read “...and their holdings, **including date of award, duration, type (e.g. prospecting, exploration, production), commodity and geographical coordinates of the awarded right.**”¹⁰ This will ensure that even “basic” registers contain key information on the resource rights that have been awarded by the government. **Transparency at the basic level can also be enhanced by including a requirement to disclose summaries of the key fiscal, environmental and social terms, in the absence of full contract disclosure.** We also recommend removing any doubt that the full text of *key terms only* may suffice for “good” and “advanced” practice by **revising to state “full text of all terms and conditions, including all contracts or licenses upon which these rights are predicated with their annexes and amendments.”**

This subpart is also probably better placed directly after 4.1.2, or even as part of 4.1.2, as it relates directly to transparency around allocation of resource rights.

4.2.2 Reporting by Resource Companies

Some clarification of wording in 4.2.2 Reporting by Resource Companies may be warranted. **Firstly, the use of “disclose” rather than “publicly disclose” or “publish” may create some ambiguity** as to whether the intent is that the information be available and accessible to the general public at even the “basic” level. Further, the use of “disclose” here is not consistent with the rest of 4.2, where “published” is the term used. **We recommend using “publish” consistently.**

While we welcome the capture of current mandatory payment disclosure laws, there seems to be **lack of clarity as to where “summary” information is required versus country- and project-level.**

¹⁰ Such key information is already required to be included in publicly available registers or cadaster systems under the EITI Requirement 3.9

Where companies are publishing information on their domestic resource extraction, the information would be necessarily country level. **“Basic” practice should therefore be revised to require country-level disclosure.**

Moreover, project-level disclosure is growing in influence around the world. It has been included in the mandatory disclosure laws passed in recent years from the U.S. Dodd-Frank Act Section 1504 to the Amendments to the EU Accounting and Transparency Directives of 2013, regulations adopted in late 2013 in Norway pursuant to the Accounting Act and Securities Trading Act, the U.K.’s Reports on Payments to Governments Regulations 2014 implementing the EU Accounting Directive and Canada’s Extractive Sector Transparency Measures Act of 2014. Several countries such as Indonesia, Zambia, Mali, Burkina Faso and Timor-Leste have effectively included project-by-project reporting in their EITI reports and the EITI Standard requires project-level reporting, provided it is consistent with the United States Securities and Exchange Commission rules and the European Union requirements.¹¹ Companies such as Tullow Oil have even chosen to voluntarily disclose project-level information.¹² It is also worth noting that 4.2.2 does not correspond to the level of disaggregation required under the “basic”, “good” and “advanced” gradations in 4.2.3 Integrity of Resource Revenue Data, which lists project-level disclosure under “good.” **Therefore project-level disclosure should at the very least be designated “good” practice, if not “basic”.**

Further, current mandatory payment disclosure laws, as well as the EITI Standard,¹³ require that payments be **specified by government entity and by type of payment**, a level of disaggregation not captured in Pillar IV.

Finally, Pillar IV does not address the format of data though the importance of public accessibility of data in a machine-readable, open format in extractives is gaining recognition. In 2013 the G8 member countries signed the Open Data Charter, committing to provision of government data in a machine-readable, open data format by default.¹⁴ The Charter highlights the importance of open data particularly in the extractive sector: “Open data also increase awareness about how countries’ natural resources are used, how extractives revenues are spent, and how land is transacted and managed. All of which promotes accountability and good governance, enhances public debate, and helps to combat corruption.”¹⁵ The EITI

¹¹ See EITI Requirement 5.2(e)

¹² http://www.tulloil.com/files/pdf/tulloil_ar_report_2013.pdf

¹³ Ibid.

¹⁴ Principle 5 of the Technical Annex provides that G8 governments will “ensure data are machine readable in bulk by providing data that are well structured to allow automated processing and access with the minimum number of file downloads....” The Annex states that the G8 agrees to implement this practice, and others, as quickly as possible and by 2015 at the latest.

¹⁵ Preamble, para. 4.

Standard also encourages the use of machine-readable format¹⁶ and the U.K. has committed to publishing reports provided under the Reports on Payments to Governments Regulations 2014 in machine-readable, open data format.¹⁷ **The “advanced” level of practice should reflect these recent developments.**

We therefore recommend revising “basic” to read: “[c]ountry-level information is annually *published* by resource companies on domestic natural resource *exploration, extraction* and trading activity, and by domestically domiciled or listed resource companies on their worldwide natural resource *exploration, extraction* and trading activity, including payments to and from governments, *by government entity payee and by type of payment.*”

Similarly, “good” should be revised to read: “[p]roject-level information is annually published... including payments to and from governments, *by government entity payee and by type of payment,* and the pricing schemes for commodities *bought and sold.*”

“Advanced” should be revised to read: “[p]roject-level information is annually published *in machine-readable, open data format...* including payments to and from governments, *by government entity payee and by type of payment,* and the pricing schemes for commodities *bought and sold.*”

4.2.3 Integrity of Resource Revenue Data

As written, 4.2.3 does not make explicit that the government must publish these reports. We suggest rewording “basic”, “good” and “advanced” to state **“Government publishes annual reports on resource revenue collections by project, which are reconciled against payments reported by companies....”** Further, as for 4.2.2, advanced practice should address availability in machine-readable, open data format: **“Government publishes annual reports *in machine-readable, open data format* on resource revenue collections by project....”**

National Resource Companies

While we recognize that Pillar III of the Fiscal Transparency Code currently covers disclosures related to public corporations—including transfers between the government and public corporations and quasi-fiscal activities undertaken by these corporations—we feel it is important to include a subpart devoted to state-owned

¹⁶ See Requirement 6.2

¹⁷ http://www.resourcegovernance.org/news/press_releases/strong-uk-rules-disclosure-oil-gas-and-mining-companies-come-force

enterprises operating in the extractive sector. National resource companies (as termed under the Guide) received special treatment under the previous Guide and the importance of these companies¹⁸ merits their continued separate treatment under the Fiscal Transparency Code.

The management of national resource companies has a major impact on how countries are able to translate potential wealth into sustainable development that benefits citizens, yet the RGI demonstrates that these companies are often opaque and unaccountable.¹⁹ Further, RGI findings demonstrated that companies that were weakest in economic and technical performance were also the least transparent and accountable.²⁰ By contrast, several strong performers exhibited high degrees of transparency.²¹

Recognizing the importance of transparency of national resource companies, the EITI Standard²² requires several disclosures that are not covered under 3.3.2, such as: the rules regarding the financial relationship between the government and national resource companies, disclosures from the government and national resource companies of their level of ownership in extractive companies operating within the country, reporting on sales of the government’s share of production collected in-kind by the national resource company, including a list of buyers, volumes sold and revenues received. We suggest that given the growing influence of the EITI,²³ these EITI requirements, including those already captured under 3.3.2, should be considered “basic” practice. “Good” and “advanced” practice could cover additional transparency mechanisms that existing literature demonstrates make for improved effectiveness of national resource companies. We suggest the following:

		PRINCIPLE	BASIC	GOOD	ADVANCED
4.2.4	National Resource Companies	National resource companies are legally required to publish comprehensive information on their financial	National resource companies annually publish: (i) All transfers between the government and national resource companies, including an	National resource companies annually publish: (i) All transfers between the government and national resource companies, including an	National resource companies annually publish: (i) All transfers between the government and national resource companies, including an

¹⁸ For example, per the findings of the RGI, national resource companies bring in more than two thirds of total government revenue in such countries as Azerbaijan, Iraq and Yemen. Chile’s Codelco is the world’s largest producer of copper, while Botswana’s partially state-owned Debswana is a leading producer of diamonds.

¹⁹ Out of 45 national resource companies assessed under the RGI, 33 were found to have unsatisfactory practices.

²⁰ For example, Nigerian National Petroleum Corporation and National Iranian oil Co.

²¹ For example, Petrobras and Statoil.

²² See EITI Requirements 3.6, 4.1(c) and 4.2(c)

²³ With 48 implementing countries.

		<p>performance and activities, including any quasi-fiscal activity undertaken by them.</p>	<p>explanation of the rules regarding the financial relationship between such companies and the government (ii) Their level of ownership in extractive companies operating within the country, including those held by their subsidiaries and joint ventures, along with any changes to level of ownership and the terms attached to such ownership (iii) Their expenditures on quasi-fiscal activities (iv) Their sales of any in-kind production collected on behalf of the government, including the list of buyers, volumes sold and revenues received.</p>	<p>explanation of the rules regarding the financial relationship between such companies and the government (ii) Their level of ownership in extractive companies operating within the country, including those held by their subsidiaries and joint ventures, along with any changes to level of ownership and the terms attached to such ownership (iii) Their expenditures on quasi-fiscal activities (iv) Their sales of any in-kind production collected on behalf of the government, including the list of buyers, volumes sold and revenues received (v) Information on their activities in exploration and production and revenues they collect from participation in exploration or production activities or as a regulator, including dividends received from partnerships</p>	<p>explanation of the rules regarding the financial relationship between such companies and the government (ii) Their level of ownership in extractive companies operating within the country, including those held by their subsidiaries and joint ventures, along with any changes to level of ownership and the terms attached to such ownership (iii) Detailed company expenditure, including their expenditures on quasi-fiscal activities (iv) Their sales of any in-kind production collected on behalf of the government, including the list of buyers, volumes sold and revenues received (v) Information on their activities in exploration and production and revenues they collect from participation in exploration or production activities or as a regulator, including</p>
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				(vi) Company budgets (vii) Company debts Natural resource companies are audited by both state and external, independent auditors and audit reports are published.	dividends received from partnerships (vi) Company budgets (vii) Company debts Natural resource companies are audited by both state and external, independent auditors and audit reports are published.
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4.3 Fiscal Forecasting and Budgeting

We support the inclusion of principles to guide the management of natural resource revenues. Resource-dependent countries face three separate but related challenges: First, year-to-year revenue volatility that, without a medium-term fiscal framework, can translate into expenditure volatility, which in turn leads to poor public investment choices. Second, some countries do not have the absorptive capacity to manage large capital inflows, leading to what is commonly termed ‘Dutch disease’. Third, spending all extractive revenues immediately may benefit current generations disproportionately compared to future generations in capital-rich countries where the social rate of return on domestic investments is less than the financial rate of return on foreign investments.

Given the above, we suggest that the title for the subpart go beyond a focus on public spending and saving to capture overall fiscal sustainability of the full government balance sheet. We suggest rephrasing: **“[b]udget documentation should provide a clear statement of the government’s resource revenue management objectives, and report on the allocation of *all* resource revenues to ensure *fiscal sustainability, stability and efficient use.*”**

4.3.1 Resource Revenue Management Objectives

It is noted that while the principle says that “[t]he government states and reports on ...”, only the advanced practice includes a requirement to report. We believe that **reporting on compliance with revenue management objectives and a fiscal**

framework is a *basic* requirement of any policy, otherwise the chance of compliance is unacceptably low.

Given that a reporting requirement should be included in each of the three levels of practice, **we would recommend that levels be differentiated by the enforceability of fiscal rules or numerical targets**. For instance, “basic” practice could be a simple policy statement, “good” practice would be a political agreement among all stakeholders and an executive decree overseen by an independent oversight committee annually, and “advanced” practice could be a legal or constitutionally approved target with an enforceable compliance mechanism.

4.3.1 calls for the government to “**define the scope of resource revenues.**” **The meaning of this term is unclear to us and should be clarified.**

4.3.2 Allocation of Resource Revenues

One of the most significant challenges many resource-rich countries face is off-budget spending. Often, resource revenues bypass the normal budget process and are diverted to special funds, local governments or national oil or mining companies. This issue is most naturally addressed under this important principle. **We recommend that the principle and levels of practice reflect, in particular, allocation to extra-budgetary funds, subnational jurisdictions, and national resource companies, in addition to the General Fund / Consolidated Fund.**

As such, we recommend the following edits:

Principle: Allocation of all resource revenues is legally authorized and is disclosed in the annual budget.

Basic practice: Budget documentation incorporates and reports on the allocation of all resource revenues and identifies their final destination, including to national resource companies, special funds or to subnational jurisdictions.

Good practice: Budget documentation incorporates and reports on the allocation of all resource revenues and identifies their final destination, including to national resource companies, special funds or to subnational jurisdictions. Any borrowing against specific resource revenue streams is reported and authorized by the legislature as part of the budget approval process.

Advanced practice: Budget documentation incorporates and reports on the allocation of all resource revenues and identifies their final destination, including to national resource companies, special funds or to subnational jurisdictions. Any

borrowing against or pledging of specific resource revenue streams is reported and authorized by the legislature as part of the budget approval process. Extra-budgetary funds' spending is approved through the budget process.

4.3.3 Natural Resource Funds

Most resource-dependent countries host at least one natural resource fund. While they have the potential to improve resource revenue management, many have complicated public financial management processes and, in the worst cases, some have become unaccountable vehicles for corruption and patronage. As such, we welcome the inclusion of this principle in Pillar IV to reflect this reality.

That said, we note that not all producers should create a natural resource fund; they should only be established where they will serve a macroeconomic purpose and improve the transparency and oversight of resource revenues. **We are concerned that this principle could be interpreted as an endorsement of fund establishment in every resource-rich country. We believe that the assertion that natural resource funds may not always be appropriate should be reflected here.**

With regard to specific edits, our own research and other well established standards such as the Santiago Principles and the SWF Scoreboard would indicate that **disclosure of specific assets held by the fund ought to be a “good” practice.**

Furthermore, it would be “advanced” practice to publish internal and external independent audit reports, as well as fund managers and investment strategy. The document can also include a requirement for performance and compliance audits (rather than just financial audits) by an independent external agency. A full list of suggested natural resource fund disclosures can be found on pages 6-7 of the following brief: http://www.resourcegovernance.org/sites/default/files/NRF_BP_Transp_EN.pdf.

4.4 Fiscal Risk Analysis and Management

The IMF is to be applauded for recognizing the fiscal risks that social and environmental impacts pose and the fact that disclosure, analysis and management of these risks are vital to overall fiscal risk management.

4.4.1 Social and Environmental Risk

We feel that the language of the principle for 4.4.1 Social and Environmental Risk falls short of the overall heading for this section by focusing on evaluation, monitoring and management of the fiscal risks associated with social and environmental impacts of natural resource exploitation, instead of the social and environmental impacts themselves, which in turn pose fiscal risks. In other words, to manage the fiscal risks a government must evaluate, monitor and manage the impacts themselves. We recommend rewording the principle to read: “[t]he **government regularly evaluates, monitors and manages the social and environmental impacts of natural resource exploitation, as well as their associated fiscal risks.**”

We believe that an essential component of the government’s ability to evaluate, monitor and manage social and environmental risks posed by natural resource exploitation is imposing a requirement for regular analysis, management and reporting of environmental and social impacts by those carrying out exploitation activities. And such analysis, management and reporting of these impacts is well-recognized by international financial institutions such as the International Finance Corporation (IFC) as indispensable for successful and sustainable project performance.²⁴

For this reason, we strongly recommend firstly that **item (i) be reworded to include the responsibility not merely to analyze and report on these impacts but to manage them**, thus it would read: “conditions of natural resource rights holdings include obligations for regular analysis, *management* and reporting of environmental and social impact.”

Secondly, as currently written, this indispensable component of a government’s ability to manage social and environmental impacts and the fiscal risks they pose is not even required under “good” practice. Currently, “good” practice requires any two of three possibilities. **We strongly recommend reworking 4.4.1 Social and Environmental Risk making item (i) as reworded the only requirement for “basic”. “Good” practice would go further, requiring items (i), (ii) and (iii).** We do not think government reporting on environmental and social impacts and associated fiscal risks should be artificially separated from reporting on management of these risks. If the government discloses the risks, it should also have considered and should disclose how it plans to manage those risks.

“Advanced” practice would include an additional requirement (iv) for the government to publish a register of the full text of resource companies’

²⁴ See IFC 2012 Environmental and Social Performance Standards and Guidance Notes, particularly Guidance Note 1.

environmental and social impact assessments and associated management plans and periodic reports. These documents provide the basis for the identification of social and environmental impacts, as well as strategies for management of such impacts, included in the government’s annual reports under “good” practice. They provide an important degree of transparency for stakeholders on the full costs of exploitation activities and how these costs are being managed. Such information is especially crucial for communities who will be directly affected by exploitation activities and who, in some countries, will be required to give their free, prior and informed consent for projects to proceed. Again, the IFC has recognized this importance in its Performance Standards, requiring its borrowers to disclose relevant information to affected communities, including, where appropriate, full environmental and social impact assessments and management plans. Further, resource-rich countries such as Colombia and Zambia have already adopted such measures.

Finally, it should be clarified that the government will “publish” these annual reports contemplated under (ii) and (iii). For example: “the government publishes annual reports on....”

Glossary

Beneficial Owner: We are concerned that the provided definition deviates from most internationally accepted beneficial ownership definitions, which emphasize the identification of natural person owners. The use of “[t]he legal entity, or if applicable, natural person” leaves open the possibility that a company can be identified as the beneficial owner, defeating the very transparency purposes that beneficial ownership provisions are meant to provide: identification of natural person owners. We suggest a revision that incorporates a carve-out for publicly traded companies, which have numerous individual owners and are already subject to extensive disclosure requirements, but that otherwise emphasizes disclosure of natural person ultimate owners. Our revised language is based on the United States’ G8 Action Plan for Transparency of Company Ownership and Control:

“a natural person, or publicly traded company who, directly or indirectly, exercises substantial control over a legal entity or has a substantial economic interest in, or receives substantial economic benefit from, such legal entity.”

Natural Resource Funds: This should be revised to read, “a state-owned investment vehicle for the management of revenues from natural resource extraction that invests at least partly in foreign assets (a subset of sovereign wealth funds).”

Resource Company: As previously discussed, activities should include exploration.

Resource Revenue: Similarly, activities should explicitly include exploration and revenues received through sale of the state's share of production in-kind should be included.

The following term should be added:

Publish: To disseminate information in location(s) and format(s) that ensure that it is widely available and accessible to the public.

<u>Contact Information:</u>

We are grateful for this opportunity to comment, and would be pleased to discuss these inputs in more detail at the IMF's request.

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ANNEX: TABLE OF KEY RECOMMENDATIONS

		Key Recommendations
	General	<ul style="list-style-type: none"> • Make Fiscal Transparency Evaluations for resource-rich countries regular, mandatory and public • Publish Fiscal Transparency Evaluations in machine-readable, open data format • Consistently use “publish” and define publish to address availability and accessibility
4.1	Legal and Fiscal Regime	
4.1.1	Legal Framework and Resource Rights	<ul style="list-style-type: none"> • Publication of regulations should be “basic” • Publication of model licenses or contracts should be “basic” or “good”
4.1.2	Allocation of Resource Rights	<ul style="list-style-type: none"> • Include requirement for use of competitive tenders for “good” and “advanced” • Clarify meaning of “open process” to include reference to published rules and qualification and evaluation criteria, participation of all qualified companies, sufficient publicity of process • Clarify “granting of rights is publicly disclosed” • Include publication of “predefined qualification and evaluation criteria” for all levels • Clarify “results of tenders” to indicate identity of winner is published • Include publication of list of bidders and bid evaluation report for “good” and “advanced” • Specify allocation of all licenses and contracts throughout sector should be through an open and competitive process
4.1.3	Fiscal Regime for Natural Resources	<ul style="list-style-type: none"> • Revise “specifying the scope for variation” to read: “The legal framework defines the fiscal regime for each natural resource sector and includes model contracts for production sharing or other contractual systems, limits the scope for deviation from the defined fiscal regime and requires disclosure of any deviations within the scope.”
4.2	Fiscal Reporting	<ul style="list-style-type: none"> • Specify that government and resource company reports will be “published” not just “provided” • Expand covered activities to include “exploration”
4.2.1	Disclosure of Natural Resource Rights	<ul style="list-style-type: none"> • Expand information to be included in the license registry to include: date of award, duration, type (e.g. prospecting, exploration, production), commodity and geographical coordinates of the awarded right • Include requirement for summaries of key fiscal, environmental and social terms in contracts at the “basic” level • Clarify that full text of <i>all</i> terms and conditions should be published at the “good” and “advanced” level, including all contracts and licenses with their annexes and amendments • Move subpart to directly after 4.1.2
4.2.2	Reporting by Resource	<ul style="list-style-type: none"> • Use “publish” rather than “disclose”

	Companies	<ul style="list-style-type: none"> • Revise to require country-level disclosure as “basic” • Revise to require project-level disclosure as “good” • Specify disclosure of payments should be disaggregated by government entity and by type of payment • Include requirement for provision of data in “machine-readable, open data format” at the “advanced” level • Revise to include pricing schemes for commodities both <i>bought</i> and <i>sold</i>
4.2.3	Integrity of Resource Revenue Data	<ul style="list-style-type: none"> • Specify that government reports must be “published” at all levels of practice • Specify publishing of reports in machine-readable, open data format at “advanced” level
	Natural Resource Companies	<ul style="list-style-type: none"> • Include a section devoted to National Resource Companies, which includes additional disclosures required under the EITI Standard or demonstrated to be good practice in existing literature
4.3	<i>Fiscal Forecasting and Budgeting</i>	<ul style="list-style-type: none"> • Expand focus from spending and saving only to specify that budget documentation should provide a clear statement of resource revenue management objectives and report on allocation of <i>all</i> resource revenues “to ensure fiscal sustainability, stability and efficient use”
4.3.1	Resource Revenue Management Objectives	<ul style="list-style-type: none"> • Revise to require annual reporting on performance of fiscal policy against objectives at <i>all</i> levels • May differentiate among the levels by enforceability of fiscal rules or numerical targets based on their establishment in, for example, a policy statement, executive decree or constitution • Clarify the requirement for government to “define the scope of resource revenues”
4.3.2	Allocation of Resource Revenues	<ul style="list-style-type: none"> • Revise the principle and levels of practice to reflect allocation of resource revenues to extra-budgetary funds, subnational jurisdictions and national resource companies, in addition to the General Fund/Consolidated Fund • Principle: Allocation of all resource revenues is legally authorized and is disclosed in the annual budget. • Basic practice: Budget documentation incorporates and reports on the allocation of all resource revenues and identifies their final destination, including to national resource companies, special funds or to subnational jurisdictions. • Good practice: Budget documentation incorporates and reports on the allocation of all resource revenues and identifies their final destination, including to national resource companies, special funds or to subnational jurisdictions. Any borrowing against specific resource revenue streams is reported and authorized by the legislature as part of the budget approval process. • Advanced practice: Budget documentation incorporates and reports on the allocation of all resource revenues and identifies their final destination, including to national resource companies, special funds or to subnational jurisdictions. Any borrowing against or pledging of specific resource revenue streams is reported and authorized by the legislature as part of the budget approval process. Extra-budgetary funds’ spending is approved through the budget process.

4.3.3	Natural Resource Funds	<ul style="list-style-type: none"> • Reflect in principle that natural resource revenue funds should only be established where they are appropriate: serve a macroeconomic purpose and improve transparency and oversight of resource revenues • Include publishing of specific assets held by the Fund as “good” practice • Include in “advanced” publishing of internal and external independent audit reports, as well as fund managers and investment strategy. Performance and compliance audits may also be included at the “advanced” level
4.4	<i>Fiscal Risk Analysis and Management</i>	
4.4.1	Social and Environmental Risk	<ul style="list-style-type: none"> • Reword to require government evaluation, monitoring and management of social and environmental impacts themselves rather than just the fiscal risks: “[t]he government regularly evaluates, monitors and manages the social and environmental impacts of natural resource exploitation, as well as their associated fiscal risks” • Reword (i) to include the responsibility not merely to analyze and report on social and environmental impacts but to manage them: “conditions of natural resource rights holdings include obligations for regular analysis, management and reporting of environmental and social impact” • Require (i) for “basic” practice • Require all of (i), (ii) and (iii) for “good” practice” • Require that government publish the full text of companies’ environmental and social impact assessments, management plans and periodic reports as “advanced” practice • Specify that the government reports required under (ii) and (iii) will be published
	Glossary	<ul style="list-style-type: none"> • Beneficial Owner: “a natural person, or publicly traded company who, directly or indirectly, exercises substantial control over a legal entity or has a substantial economic interest in, or receives substantial economic benefit from, such legal entity” • Natural Resource Funds: “a state-owned investment vehicle for the management of revenues from natural resource extraction that invests at least partly in foreign assets (a subset of sovereign wealth funds)” • Resource Company: include “exploration” • Resource Revenue: include “exploration” and revenues received through sale of the state’s share of production in-kind • Publish: To disseminate information in location(s) and format(s) that ensure that it is widely available and accessible to the public”